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From:

Sent: Friday, July 09, 2010 1:44:55 PM

To:

Cc:

Subject: []

This responds to a June 29, 2010 email from . The email included a letter from Congressman and a letter from Congressman constituent, (Constituent). The letter from Constituent indicates that a taxpayer related to Constituent made a gift to a trust and filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, reporting the transfer. The taxpayer, however, is concerned that the gift was not properly reported. The taxpayer is also concerned that the period of limitation on assessment and collection under section 6501(a) has not commenced because certain information was not attached to the Form 709. Finally, Constituent suggests that the Internal Revenue Service (Service) enter into a Closing Agreement with the taxpayer to resolve the uncertainty over the matter.

In his email, suggests that the taxpayer seek a private letter ruling from the Service.

You may include the following in your response to Congressman .

Section 5.01 of Rev. Proc. 2010-1, 2010-1 I.R.B. 1, 10, provides that, in gift tax matters, the Internal Revenue Service generally issues a letter ruling on a proposed transaction or on a completed transaction if the letter ruling request is submitted before the return is filed for the year in which the transaction is completed. The letter forwarded from Constituent indicates that the taxpayer, who is related to Constituent, filed a Form 709 and reported the transfer. Because the taxpayer filed a Form 709 reporting the transfer in question, the Internal Revenue Service cannot entertain a ruling request on this matter.

Section 6501(a) of the Internal Revenue Code provides, except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. For purposes of this chapter, the term

“return” means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit).

Under section 6501(c)(9), if the value of gifted property is required to be shown on a gift tax return but is not shown on the return, then any gift tax on the transfer of gifted property may be assessed at any time. The unlimited assessment period does not apply if the gift was disclosed on the return in a “manner adequate to apprise the Secretary of the nature of such item.”

Section 301.6501(c)-1(f)(1) of the Gift Tax Regulations provides that, if a gift is not “adequately disclosed” on a gift tax return, the tax imposed on that gift may be assessed at any time. Under § 301.6501(c)-1(f)(2), a gift will be adequately disclosed if the gift tax return (or a statement attached to the return) includes the trust’s tax identification number and brief description of the terms of the trust, or, in lieu of that description, a copy of the trust instrument.

In this case, the taxpayer may file an amended gift tax return for the year in question and include the additional information that he believes is necessary to adequately disclose the gift. The Internal Revenue Service will then decide whether to audit the gift tax return.

of our office is familiar with this case.

can be reached at